

September 26, 2022

There is no bar on withdrawing application admitted under section 7 of IBC before the constitution of CoC.

CASE TITLE	Ashok G. Rajani Versus Beacon Trusteeship Ltd. & Ors. ¹
CASE CITATION	Civil Appeal No.4911 Of 2021
SECTIONS/REGULATION	Section 62 of IBC
DATE OF ORDER	22.09.2022
COURT/ TRIBUNAL	Supreme Court of India
CASES REFERRED	Swiss Ribbons (P) Ltd. Vs Union of India, (2019)

Brief of the case:

This appeal was preferred under Section 62 of IBC before the Supreme Court assailing the interim order passed by the NCLAT, Principal Bench, New Delhi. NCLAT issued a notice of appeal but did not restrain the IRP from proceedings under CIRP of the Corporate Debtor, however, IRP was restrained from constituting the CoC till the next date of hearing. Subsequently, the Appellant & Respondent were giving opportunity to settle the dispute before AA.

The parties amicably decided settled their disputes and had entered into a formal settlement. Meanwhile, considering the settlement between the parties an Interim Stay of publication was granted under section 13 of the IBC and later on 21st August, 2021 parties filed an application under section 12A for withdrawal of application.

On 18th August 2021, the NCLAT stayed the formation of CoC but handed over all the assets & proceed with the CIRP to IRP even though the matter was settled between the parties. Aggrieved by this order the Appellant filed an appeal to the Apex Court.

Decision:

Hon'ble Supreme Court while dismissing the appeal directed NCLT to take up the settlement application and observed -

“28. A reading of the statement of objects and reasons with the statutory Rule 11 of the NCLT Rules enables the NCLT to pass orders for the ends of justice including order permitting an applicant for CIRP to withdraw its application and to enable a corporate body to carry on business with ease, free of any impediment.

30. The settlement cannot be stifled before the constitution of the Committee of Creditors in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process is not a reason to stifle the settlement.”

QR CODE FOR FULL ORDER/JUDGEMENT:



¹ <https://ibbi.gov.in/uploads/order/8da40cbbdbe043241eb6a983059058aa.pdf>